IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 825 (SS) of 2005

Smt. Devki Devi,
W/o Sri Rajendra Singh Mehta,
R/o Village & Post- Bohala,
Tehsil & District – Bageshwar. **……..Petitioner.**

Versus

1. State of Uttaranchal through Secretary (Basic Education), Uttaranchal.
2. Deputy Director of Education (Basic), Kumaon Mandal, Nainital.
3. Director Basic Education Officer, Bageshwar.
4. Director Basic Education Officer, Almora.
5. Deputy Basic Education Officer, Almora.

…….**Respondents**

Hon'ble M.M. Ghildiyal, J

Heard Sri B.S. Adhikari, learned counsel for the petitioner and Sri H.M. Raturi, learned counsel for State of Uttarakhand on behalf of respondents.

By means of this writ petition, the petitioner has prayed for the following relief:

1. *Issue a writ order or direction in the nature of Certiorari for quashing the impugned order dated 29.10.2003 of Deputy Basic Shiksha Adhikari, Almora (Annexure no. 10) which is not tenable in the eyes of law.*
2. *Issue a writ, order or direction in the nature of Mandamus commanding the respondents to pay the all service benefits of the late Sri Rajendra Singh Mehta along with pensionary from the date of judgement of Civil Court, to the petitioner.*

3. *Issue a writ, order or direction in the nature of Mandamus commanding the respondents to pay the arrears also along with the penal interest with current rates.*
4. *Pass any other writ, order or direction, which this Hon'ble court may deem fit and proper in the case.*
5. *Award the costs throughout.*

Vide order dated 29.10.2003 the Deputy Basic Education Officer, Almora has refused to grant family pension to the petitioner.

The stand of the petitioner is that husband of the petitioner late Sri Rajendra Singh Mehta was working as Assistant Teacher in Primary School, Sarna, Vikas Khand, Takula, District – Bageshwar. Husband of the petitioner was missing with effect from 29.04.1974.

In the year 2000, petitioner filed suit before Civil Judge (SD), Bageshwar for declaring her husband dead under Section 108 of Indian Evidence Act as he was missing with effect from 29.04.1974.

Learned Civil Judge on 22.06.2001 allowed the suit and declared the petitioner's husband dead under Section 108 of Indian Evidence Act. After this judgment, petitioner applied for family pension and for payment of other retirel benefits of her husband, however, the Deputy Basic Education Officer, Almora vide impugned order has refused to grant family pension saying that as per judgement of Civil Judge petitioner's husband was declared dead from the date of missing i.e. with effect from 29.04.1974 and the scheme for grant of new pension was implemented with effect from 01.03.1977 the petitioner is not entitled for family pension.

I have perused the judgment passed by learned Civil Judge, which is annexed as Annexure no. 3 to the writ petition.

Learned Civil Judge has only declared that the husband of the petitioner is declared as dead under Section 108 of Indian Evidence Act and nowhere in the judgement it is stated that husband of the petitioner is being declared dead with effect from the date of missing.

Section 108 of Indian Evidence Act enable the court to draw statutory presumption that a man is not alive, unless contrary is proved by the opposite party, if he has not been heard of for seven years by those who would naturally have heard of him, if he had been alive. No exact date of death of a missing person can be declared by the court. The court can only declare a person dead after seven years of his missing. Petitioner's husband was missing with effect from 29.04.1974.

Learned Civil Judge has also not held in his judgment that husband of the petitioner is declared dead with effect from 29.04.1974.

In the circumstances stated above, order 29.10.2003 passed by Deputy Basic Education Officer, Almora is liable to be quashed. Writ petition is allowed. Order dated 29.10.2003 passed by Deputy Basic Education Officer, Almora is quashed. No order as to costs.

(M.M. Ghildiyal, J)

April 12, 2007
SKSharma